

117TH CONGRESS
1ST SESSION

H. R. 1916

To provide health insurance benefits for outpatient and inpatient items and services related to the diagnosis and treatment of a congenital anomaly or birth defect.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

Ms. ESHOO (for herself, Mr. FERGUSON, Ms. MCCOLLUM, Mrs. AXNE, Ms. DEGETTE, Mr. MCEACHIN, Mrs. LURIA, Mr. STANTON, Ms. STEVENS, Mr. HUFFMAN, Mr. GOTTHEIMER, Mrs. TRAHAN, Ms. BARRAGÁN, Mr. GRIJALVA, Mr. WITTMAN, Mr. GALLEGOS, Mr. CARBAJAL, Ms. WILD, Mr. SUOZZI, Mr. DEUTCH, Ms. NORTON, Mr. FITZPATRICK, Ms. BROWNLEY, Mrs. HAYES, Mr. TAKANO, Ms. BLUNT ROCHESTER, Mr. HASTINGS, Mr. KIM of New Jersey, Mr. PERLMUTTER, Mr. CROW, Miss RICE of New York, Mr. STAUBER, Mr. RODNEY DAVIS of Illinois, Mr. PAYNE, Mr. RUPPERSBERGER, Ms. TLAIB, Mr. MOULTON, Mr. PASCRELLI, Mrs. WATSON COLEMAN, Mrs. BEATTY, Mr. VELA, Mr. COOPER, Ms. UNDERWOOD, Mr. TRONE, Mr. YOUNG, Ms. MENG, Ms. PORTER, Ms. SCANLON, Mr. RESCHENTHALER, Mr. VAN DREW, Mr. TIMMONS, Ms. CRAIG, Mr. NEGUSE, Ms. PINGREE, Mr. LYNCH, Mr. POSEY, Mr. LAMB, Mr. COLE, Mr. JOYCE of Pennsylvania, Mr. Sires, Mr. PALAZZO, Mr. GRAVES of Louisiana, Mr. YARMUTH, Mr. BISHOP of Georgia, Mrs. RADEWAGEN, Mr. KILDEE, Mr. BUTTERFIELD, Mr. TONKO, Mr. STIVERS, Ms. ROSS, Mr. LEVIN of Michigan, Ms. HOULAHAN, Mrs. NAPOLITANO, Mr. RASKIN, Mr. McNERNEY, Mr. McGOVERN, Mr. MORELLE, Ms. BASS, Ms. BONAMICI, Ms. CLARKE of New York, Ms. SALAZAR, Mr. MRVAN, Ms. LEE of California, Mr. RUTHERFORD, Ms. SÁNCHEZ, Mr. CONNOLLY, Mrs. LAWRENCE, Mr. MCKINLEY, Mr. PRICE of North Carolina, Mr. GARAMENDI, Ms. VELÁZQUEZ, Mr. ADERHOLT, Ms. KELLY of Illinois, Mr. JONES, Mr. PHILLIPS, Ms. OMAR, Mr. ALLEN, Mr. GARBARINO, Mr. GOSAR, Mr. LAWSON of Florida, Mr. RUSH, Mr. CARTER of Georgia, Mr. BACON, Mr. GROTHMAN, Mr. HARDER of California, Mr. VICENTE GONZALEZ of Texas, Mr. MANN, Mr. UPTON, Mr. COHEN, Mr. CICILLINE, Mr. KHANNA, Mrs. HARTZLER, Ms. BUSH, Mr. BOST, Ms. STRICKLAND, Ms. MANNING, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. GUEST, Mr. SIMPSON, Mr. O'HALLERAN, Ms. MOORE of Wisconsin, Mr. BABIN, Ms. TITUS, Ms. JOHNSON of Texas, Mr. POCAN, Mr. KRISHNAMOORTHI, Mr. SEAN PATRICK MALONEY of New York, Ms. DELBENE, Mr. RYAN, Mr. STEWART, Mr. HAGEDORN, Ms. JAYAPAL, Mr.

EMMER, and Mr. MOORE of Utah) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide health insurance benefits for outpatient and inpatient items and services related to the diagnosis and treatment of a congenital anomaly or birth defect.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Lasting
5 Smiles Act”.

6 **SEC. 2. COVERAGE OF CONGENITAL ANOMALY OR BIRTH**
7 **DEFECT.**

8 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—
9 Part D of title XXVII of the Public Health Service Act
10 (42 U.S.C. 300gg–111 et seq.) is amended by adding at
11 the end the following new section:

12 **“SEC. 2799A–11. STANDARDS RELATING TO BENEFITS FOR**
13 **CONGENITAL ANOMALY OR BIRTH DEFECT.**

14 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-
15 TIVE TREATMENT.—

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer offering group or individual
3 health insurance coverage, shall provide coverage for
4 outpatient and inpatient items and services related
5 to the diagnosis and treatment of a congenital
6 anomaly or birth defect.

7 “(2) REQUIREMENTS.—

8 “(A) IN GENERAL.—Coverage provided
9 under paragraph (1) shall include any medically
10 necessary item or service to functionally im-
11 prove, repair, or restore any body part to
12 achieve normal body functioning or appearance,
13 as determined by the treating physician (as de-
14 fined in section 1861(r) of the Social Security
15 Act), due to congenital anomaly or birth defect.

16 “(B) FINANCIAL REQUIREMENTS AND
17 TREATMENT REQUIREMENTS.—Any coverage
18 provided under paragraph (1) under a group
19 health plan or individual or group health insur-
20 ance coverage offered by a health insurance
21 issuer may be subject to coverage limits (such
22 as medical necessity, pre-authorization, or pre-
23 certification) and cost-sharing requirements
24 (such as coinsurance, copayments, and
25 deductibles), as required by the plan or issuer,

1 that are no more restrictive than the predomi-
2 nant coverage limits and cost-sharing require-
3 ments, respectively, applied to substantially all
4 medical and surgical benefits covered by the
5 plan (or coverage).

6 “(3) TREATMENT DEFINED.—In this section:

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the term ‘treatment’ in-
9 cludes, with respect to a group health plan or
10 group or individual health insurance coverage
11 offered by a health insurance issuer, inpatient
12 and outpatient items and services performed to
13 improve, repair, or restore bodily function (or
14 performed to approximate a normal appear-
15 ance), due to a congenital anomaly or birth de-
16 fect, and includes treatment to any and all
17 missing or abnormal body parts (including
18 teeth, the oral cavity, and their associated
19 structures) that would otherwise be provided
20 under the plan or coverage for any other injury
21 or sickness, including—

22 “(i) any items or services, including
23 inpatient and outpatient care, reconstruc-
24 tive services and procedures, and complica-
25 tions thereof;

1 “(ii) adjunctive dental, orthodontic, or
2 prosthetic support from birth until the
3 medical or surgical treatment of the defect
4 or anomaly has been completed, including
5 ongoing or subsequent treatment required
6 to maintain function or approximate a nor-
7 mal appearance;

8 “(iii) procedures that materially im-
9 prove, repair, or restore bodily function;
10 and

11 “(iv) procedures for secondary condi-
12 tions and follow-up treatment associated
13 with the underlying congenital anomaly or
14 birth defect.

15 “(B) EXCEPTION.—The term ‘treatment’
16 shall not include cosmetic surgery performed to
17 reshape normal structures of the body to im-
18 prove appearance or self-esteem.

19 “(b) NOTICE.—A group health plan under this part
20 shall comply with the notice requirement under section
21 714(c) of the Employee Retirement Income Security Act
22 of 1974 with respect to the requirements of this section
23 as if such section applied to such plan.”.

24 (b) ERISA AMENDMENTS.—

1 (1) IN GENERAL.—Subpart B of part 7 of sub-
2 title B of title I of the Employee Retirement Income
3 Security Act of 1974 is amended by adding at the
4 end the following:

5 **SEC. 726. STANDARDS RELATING TO BENEFITS FOR CON-**
6 **GENITAL ANOMALY OR BIRTH DEFECT.**

7 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-
8 TIVE TREATMENT.—

9 “(1) IN GENERAL.—A group health plan, and a
10 health insurance issuer offering group health insur-
11 ance coverage, shall provide coverage for outpatient
12 and inpatient items and services related to the diag-
13 nosis and treatment of a congenital anomaly or birth
14 defect.

15 “(2) REQUIREMENTS.—

16 “(A) IN GENERAL.—Coverage provided
17 under paragraph (1) shall include any medically
18 necessary item or service to functionally im-
19 prove, repair, or restore any body part to
20 achieve normal body functioning or appearance,
21 as determined by the treating physician (as de-
22 fined in section 1861(r) of the Social Security
23 Act), due to congenital anomaly or birth defect.

24 “(B) FINANCIAL REQUIREMENTS AND
25 TREATMENT REQUIREMENTS.—Any coverage

1 provided under paragraph (1) under a group
2 health plan or group health insurance coverage
3 offered by a health insurance issuer may be
4 subject to coverage limits (such as medical ne-
5 cessity, pre-authorization, or pre-certification)
6 and cost-sharing requirements (such as coinsur-
7 ance, copayments, and deductibles), as required
8 by the plan or issuer, that are no more restric-
9 tive than the predominant coverage limits and
10 cost-sharing requirements, respectively, applied
11 to substantially all medical and surgical benefits
12 covered by the plan (or coverage).

13 “(3) TREATMENT DEFINED.—In this section:

14 ““(A) IN GENERAL.—Except as provided in
15 subparagraph (B), the term ‘treatment’ in-
16 cludes, with respect to a group health plan or
17 group health insurance coverage offered by a
18 health insurance issuer, inpatient and out-
19 patient items and services performed to im-
20 prove, repair, or restore bodily function (or per-
21 formed to approximate a normal appearance),
22 due to a congenital anomaly or birth defect, and
23 includes treatment to any and all missing or ab-
24 normal body parts (including teeth, the oral
25 cavity, and their associated structures) that

1 would otherwise be provided under the plan or
2 coverage for any other injury or sickness, in-
3 cluding—

4 “(i) any items or services, including
5 inpatient and outpatient care, reconstruc-
6 tive services and procedures, and complica-
7 tions thereof;

8 “(ii) adjunctive dental, orthodontic, or
9 prosthetic support from birth until the
10 medical or surgical treatment of the defect
11 or anomaly has been completed, including
12 ongoing or subsequent treatment required
13 to maintain function or approximate a nor-
14 mal appearance;

15 “(iii) procedures that materially im-
16 prove, repair, or restore bodily function;
17 and

18 “(iv) procedures for secondary condi-
19 tions and follow-up treatment associated
20 with the underlying congenital anomaly or
21 birth defect.

22 “(B) EXCEPTION.—The term ‘treatment’
23 shall not include cosmetic surgery performed to
24 reshape normal structures of the body to im-
25 prove appearance or self-esteem.

1 “(b) NOTICE.—A group health plan under this part
2 shall comply with the notice requirement under section
3 714(c) with respect to the requirements of this section as
4 if such section applied to such plan.”.

5 (2) TECHNICAL AMENDMENTS.—

6 (A) Section 732(a) of such Act (29 U.S.C.
7 1191a(a)) is amended by striking “section 711”
8 and inserting “sections 711 and 726”.

9 (B) The table of contents in section 1 of
10 such Act is amended by inserting after the item
11 relating to section 725 the following new item:

“Sec. 726. Standards relating to benefits for congenital anomaly or birth de-
feet.”.

12 (c) INTERNAL REVENUE CODE AMENDMENTS.—

13 (1) IN GENERAL.—Subchapter B of chapter
14 100 of the Internal Revenue Code of 1986 is amend-
15 ed by adding at the end the following:

16 **“SEC. 9826. STANDARDS RELATING TO BENEFITS FOR CON-**
17 **GENITAL ANOMALY OR BIRTH DEFECT.**

18 “(a) REQUIREMENTS FOR CARE AND RECONSTRUC-
19 TIVE TREATMENT.—

20 “(1) IN GENERAL.—A group health plan shall
21 provide coverage for outpatient and inpatient items
22 and services related to the diagnosis and treatment
23 of a congenital anomaly or birth defect.

24 “(2) REQUIREMENTS.—

1 “(A) IN GENERAL.—Coverage provided
2 under paragraph (1) shall include any medically
3 necessary item or service to functionally im-
4 prove, repair, or restore any body part to
5 achieve normal body functioning or appearance,
6 as determined by the treating physician (as de-
7 fined in section 1861(r) of the Social Security
8 Act), due to congenital anomaly or birth defect.

9 “(B) FINANCIAL REQUIREMENTS AND
10 TREATMENT REQUIREMENTS.—Any coverage
11 provided under paragraph (1) under a group
12 health plan may be subject to coverage limits
13 (such as medical necessity, pre-authorization, or
14 pre-certification) and cost-sharing requirements
15 (such as coinsurance, copayments, and
16 deductibles), as required by the plan, that are
17 no more restrictive than the predominant cov-
18 erage limits and cost-sharing requirements, re-
19 spectively, applied to substantially all medical
20 and surgical benefits covered by the plan.

21 “(3) TREATMENT DEFINED.—In this section:

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term ‘treatment’ in-
24 cludes, with respect to a group health plan, in-
25 patient and outpatient items and services per-

1 formed to improve, repair, or restore bodily
2 function (or performed to approximate a normal
3 appearance), due to a congenital anomaly or
4 birth defect, and includes treatment to any and
5 all missing or abnormal body parts (including
6 teeth, the oral cavity, and their associated
7 structures) that would otherwise be provided
8 under the plan for any other injury or sickness,
9 including—

10 “(i) any items or services, including
11 inpatient and outpatient care, reconstruc-
12 tive services and procedures, and complica-
13 tions thereof;

14 “(ii) adjunctive dental, orthodontic, or
15 prosthetic support from birth until the
16 medical or surgical treatment of the defect
17 or anomaly has been completed, including
18 ongoing or subsequent treatment required
19 to maintain function or approximate a nor-
20 mal appearance;

21 “(iii) procedures that materially im-
22 prove, repair, or restore bodily function;
23 and

24 “(iv) procedures for secondary condi-
25 tions and follow-up treatment associated

1 with the underlying congenital anomaly or
2 birth defect.

3 “(B) EXCEPTION.—The term ‘treatment’
4 shall not include cosmetic surgery performed to
5 reshape normal structures of the body to im-
6 prove appearance or self-esteem.

7 “(b) NOTICE.—A group health plan under this part
8 shall comply with the notice requirement under section
9 714(c) of the Employee Retirement Income Security Act
10 of 1974 with respect to the requirements of this section
11 as if such section applied to such plan.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions for such subchapter is amended by adding at
14 the end the following new item:

“See. 9826. Standards relating to benefits for congenital anomaly or birth de-
flect.”.

15 (d) RULE OF CONSTRUCTION.—A group health plan
16 or health insurance issuer shall provide the benefits de-
17 scribed in section 2799A–11 of the Public Health Service
18 Act (as added by subsection (a)), section 726 of the Em-
19 ployee Retirement Income Security Act of 1974 (as added
20 by subsection (b)), and section 9826 of the Internal Rev-
21 enue Code of 1986 (as added by subsection (c)) under the
22 terms of such plan or health insurance coverage offered
23 by such issuer.

1 (e) CLARIFYING AMENDMENT REGARDING APPLICA-
2 TION TO GRANDFATHERED PLANS.—Section
3 1251(a)(4)(A) of the Patient Protection and Affordable
4 Care Act (42 U.S.C. 18011(a)(4)(A)), is amended by add-
5 ing at the end the following:

6 “(v) Section 2799A–11 (relating to
7 standards relating to benefits for con-
8 genital anomaly or birth defect), as added
9 by section 2(a) of the Ensuring Lasting
10 Smiles Act.”.

11 (f) EFFECTIVE DATE.—The amendments made by
12 this section shall apply with respect to group health plans
13 for plan years beginning on or after January 1, 2022, and
14 with respect to health insurance coverage offered, sold,
15 issued, renewed, in effect, or operated in the individual
16 market on or after such date.

17 (g) COORDINATED REGULATIONS.—Section 104(1)
18 of the Health Insurance Portability and Accountability
19 Act of 1996 is amended by striking “this subtitle (and
20 the amendments made by this subtitle and section 401)”
21 and inserting “the provisions of part 7 of subtitle B of
22 title I of the Employee Retirement Income Security Act
23 of 1974, the provisions of parts A, C, and D of title XXVII

1 of the Public Health Service Act, and chapter 100 of the
2 Internal Revenue Code of 1986”.

